

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
(ROME DIVISION)**

In re: : Chapter 11
: :
EDWARD BYRON SLAUGHTER; : Case No. 13-42906
E. BYRON SLAUGHTER, LLC; : Case No. 13-42907
APEX LOCATORS, LLC; : Case No. 13-42908
CHAPEL HEIGHTS, LLC; and : Case No. 13-42909
ROLLING HILLS PLAZA, LLC, : Case No. 13-42910

Debtors. / *Jointly Administered Under
Case No. 13-42906-BEM*

REORGANIZED DEBTOR'S MOTION TO REOPEN CASE

E. Byron Slaughter, LLC (the “**Reorganized Debtor**”), a reorganized debtor in the above-captioned case, through undersigned counsel, hereby files this motion (the “**Motion**”) requesting that the Court (1) reopen this Chapter 11 bankruptcy case (the “**Chapter 11 Case**”).

In support of the Motion, Reorganized Debtor respectfully represents as follows:

I.

STATEMENT OF FACTS

A. The Chapter 11 Case.

1. The Chapter 11 Case was filed on October 5, 2013. The Court confirmed Debtor’s First Amended Plan of Reorganization¹, filed December 1, 2015, by Order dated February 1, 2016².

¹ Capitalized terms not otherwise defined in this motion shall have the meaning proscribed in the Debtor’s First Amended Plan of Reorganization, dated December 1, 2015 [Doc. 391] (the “Confirmed Plan”)

² Order Confirming E. Byron Slaughter, LLC’s First Amended Plan of Reorganization [Doc. 454] (the “Confirmation Order”)

2. The only claims under the Confirmed Plan consist of the secured claim (the “**CRE Claim**”) of 2010- Venture, LLC, as assignee of the FDIC, as Receiver for Community Bank of West Georgia (“**CRE**”), certain priority ad valorem property tax claims and a nominal claim held by single unsecured creditor. Under the Confirmed Plan, the CRE Claim is secured by the deeds to secure debt and related collateral documents described as the “**CRE Loan Documents**” in the Confirmed Plan consisting of approximately forty-five (45) parcels of improved and unimproved real property described as the “**CRE Collateral**” in the Confirmed Plan.

3. On September 23, 2016, the Court entered its Order and Final Decree [Doc. 516] closing the Chapter 11 Case.

B. The Court Should Reopen the Chapter 11 Case.

5. Section 350(b) of the Bankruptcy Code provides, *inter alia*, that a case may be reopened in the court in which it was closed “to accord relief to the debtor, or for other cause.” 11 U.S.C. § 350(b).

6. Bankruptcy Rule 5010 authorizes the debtor (or any other party in interest) to file a motion to reopen a case. Fed. R. Bankr. P. 5010. Furthermore, Bankruptcy Rule 9024 expressly excepts a motion to reopen under Rule 5010 from the one year time limit of FRCP 60. Fed. R. Bankr. P. 9024. Therefore, there is no time limit for a motion to reopen, and it may be brought within any reasonable time. See In re Narod, 138 B.R. 478, 483-84 (E.D. Pa. 1992); In re Rex, 217 B.R. 57, 61 (Bankr. E.D. Pa. 1998); Stackhouse v. Plumlee (In re Plumlee), 236 B.R. 606, 610-11 (E.D. Va. 1999) (creditor's motion to reopen a chapter 7 case granted even though the motion was filed five years after the case was closed).

7. A bankruptcy court's exercise of its authority to reopen a closed case "is entirely within its sound discretion, based upon the circumstances of each case." Pajarillo v. JPMorgan Chase Bank, N.A. (In re Pajarillo), 2014 U.S. Dist. LEXIS 36004, at *19 (D. Nev. 2014) (quoting In re Castillo, 297 F.3d 940, 945 (9th Cir. 2002)). Moving to reopen a bankruptcy case is a proper procedural avenue whenever a debtor seeks to enforce the discharge injunction. See In re Grihalva, 2013 Bankr. LEXIS 4057, at *8 (Bankr. D. Nev. 2013) (citing Barrientos v. Wells Fargo Bank, N.A., 633 F.3d 1186, 1190 28 (9th Cir. 2011)); Alderwoods Grp., Inc. v. Garcia, 682 F.3d 958, 965 (11th Cir. 2012).
8. The Reorganized Debtor seeks to reopen the Chapter 11 Case to allow the Court to consider the Reorganized Debtor's motion (the "**Debtor Motion**") to enforce certain terms of the Confirmed Plan which the Reorganized Debtor contends are being violated by Apex Bank ("Apex"), the current holder of the secured claim (the "**CRE Claim**") of 2010- Venture, LLC, as assignee of the FDIC, as Receiver for Community Bank of West Georgia ("CRE") under the Confirmed Plan, and the requirements for the sale of real properties under the Confirmed Plan free of the CRE Claim. The specific issues raised by the Debtor Motion are (1) Apex's refusal, as holder of the CRE Claim ("Apex"), to apply the principal amount of certain purchase money promissory notes constituting proceeds from the sale of CRE Collateral, which notes have been assigned to Apex, in reduction of the principal balance of the CRE Claim, and (2) Apex's refusal to provide or confirm the payoff amounts necessary to obtain the release of properties proposed to be sold by the Reorganized Debtor from the lien of the CRE Loan Documents.

WHEREFORE, the Reorganized Debtor respectfully requests the entry of an order:

- (a) Reopening the case to consider the Reorganized Debtor's motion to enforce the terms of the Confirmed Plan and Confirmation Order;
- (b) any other relief the court finds appropriate.

This the 16th day of July, 2019.

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Attorneys for Debtor

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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing REORGANIZED DEBTOR'S MOTION TO REOPEN CASE will be served upon the parties listed on Exhibit "A" attached hereto by depositing a copy of same in the United States Mail with sufficient postage thereon.

This 16th day of July, 2019.

/s/ J. Nevin Smith
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